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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.V., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JORGE V.,

Defendant and Appellant.

D055309

(Super. Ct. No. J516697C)

APPEAL from a judgment of the Superior Court of San Diego County, Garry G.
Haehnle, Judge. Affirmed.

Jorge V. appeals a judgment terminating his parental rights to his minor daughter,
L.V., under Welfare and Institutions Code¹ section 366.26. Jorge argues the evidence
was insufficient to support the court's findings that the beneficial parent-child relationship

¹ Statutory references are to the Welfare and Institutions Code.

exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude termination of his parental rights. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2007 the San Diego County Health and Human Services Agency (the Agency) filed a petition on behalf of then eight-year-old L.V. under section 300, subdivision (j). The petition alleged L.V. was at risk of suffering serious harm because L.V.'s father, Jorge V., had sexually molested her 12-year-old half-sibling. The petition further alleged L.V. was subjected to violent confrontations between her parents.

According to the Agency's detention and jurisdiction reports, an Agency social worker reported that L.V.'s older half-sibling, Y.S., disclosed that she had been molested by Jorge.² Y.S. stated that Jorge touched her breasts on a daily basis since November 2006. Y.S. also disclosed two incidents of Jorge massaging her vaginal area over her pajama bottoms. Y.S. told the social worker she was afraid of Jorge and that he threatened to hurt her if she told anyone about what he had done to her. The Agency included Jorge's criminal history in its report, which included arrests for spousal battery and an arrest for a lewd and lascivious act with a child under the age of 14.

An Agency social worker interviewed Jorge and questioned him regarding the pending allegations. Jorge admitted that he touched Y.S.'s breasts but stated his actions were harmless and that it was "only a game." The social worker recommended that Jorge participate in services, including a domestic violence program and a sexual abuse

² Y.S. is not a party in this appeal.

treatment program for perpetrators. The social worker further recommended that future visits between L.V. and Jorge should remain supervised until Jorge made progress with his case plan. The court followed the Agency's recommendations; in July 2007 the court declared L.V. a dependent and removed her from the custody of her parents. The court ordered that L.V. be placed in out-of-home care.

During the next six months Jorge enrolled in a sex offenders program and a 52-week domestic violence program. However, he continued to minimize his actions and did not take full responsibility for abusing Y.S. In March 2008 the court ordered an additional six months of services for Jorge, that L.V. remain placed in the home of her relative caregiver, and that visits between L.V. and Jorge continue to be supervised.

In May 2008 Jorge was sentenced to one year in prison after he pleaded guilty to sexual battery and he was ordered to register as a sex offender. The Agency social worker sent Jorge a prison packet and a letter informing Jorge about visits, phone calls and writing letters to L.V. while he served his sentence. Jorge, however, did not participate in visits with L.V. while he was in prison. Jorge instructed the Agency not to bring L.V. to the prison for supervised visits because he was a sex offender. He did not want his fellow inmates to target him if they discovered the reason he was in prison.

In September 2008 the Agency submitted an addendum report recommending reunification services for Jorge be terminated and the court schedule a section 366.26 selection and implementation hearing. Jorge continued to minimize the abuse he committed against Y.S. He maintained that he was playing a game with her. Jorge had not made progress with services because he was incarcerated and he requested the

Agency "leave [him] alone." In December 2008 the court held a review hearing and found Jorge had not made substantive progress with his case plan. The court terminated services and scheduled a section 366.26 hearing.

In anticipation of the section 366.26 hearing, social worker Monica Prokesch prepared an assessment report. Prokesch assessed L.V. as adoptable and described her as a healthy, friendly and well-behaved 10-year-old girl. The social worker believed L.V. was bonded to her relative caregiver. The relative caregiver wanted to adopt L.V. and L.V. was in agreement with being adopted by the caregiver. In addition to the relative caregiver, there were 10 other approved adoptive families interested in adopting a child with L.V.'s characteristics.

Prokesch concluded that it would not be detrimental to terminate Jorge's parental rights. Prokesch reported that before Jorge went to jail, his visits with L.V. were not regular even though the Agency attempted to arrange regular visits. While in prison, Jorge asked that he not have any contact with the Agency and he did not want the Agency to supervise visits between him and L.V. Jorge remained incarcerated for nine months and he did not see L.V. during that time. Shortly after his release from prison, Jorge began to have supervised weekly visits with L.V. on a fairly regular basis.

Prokesch observed several visits between L.V. and Jorge in the months before the section 366.26 hearing. The visits generally were appropriate. Jorge greeted L.V. with a hug and she would smile at him. Jorge sometimes would bring gifts for L.V. that included clothes, money and food. The two interacted well with one another and L.V. would laugh and the two would talk to each other about their relatives.

Prokesch believed the relationship L.V. had with Jorge was equivalent to a relationship a child would have with an extended family member, rather than a parent-child relationship. Jorge had not been a consistent figure in L.V.'s life since she became a dependent, and for some time he had not made any effort to ensure that her daily emotional and psychological needs were met. Prokesch concluded that the benefits of adoption outweighed the benefits L.V. would receive from continuing a relationship with Jorge.

In June 2009 the court held a contested section 366.26 hearing. The court received in evidence the Agency's assessment report. Social worker Prokesch appeared in court but the parties did not examine her. After considering the evidence, the court found L.V. was adoptable and none of the exceptions applied to preclude terminating parental rights. The court terminated parental rights. Jorge timely filed a notice of appeal.

DISCUSSION

Jorge challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude terminating his parental rights. He asserts he maintained regular contact with L.V. and shared a strong relationship with her.

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)). If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or

evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of six specified exceptions. (§ 366.26, subd. (c)(1)(B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive

emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from the day-to-day interaction, companionship and shared experiences." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although day-to-day contact is not required, it is typical in a parent-child relationship. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) The parent must show he or she occupies a parental role in the child's life, resulting in a positive and emotional attachment from child to parent. (*Autumn H.*, *supra*, at p. 575; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

There is substantial evidence to support the court's findings that Jorge did not have regular visits with L.V. Jorge had some visits with L.V. at the start of the dependency, but these visits were not regular. The social worker reported that Jorge resisted visits with L.V. at the visitation center. Jorge then went to prison and he did not want to see L.V. or have any contact with the Agency while serving his sentence. Jorge left prison after nine months. He attended supervised visits with L.V. on a weekly basis and saw her fairly regularly between February and April of 2009.

Even had Jorge visited L.V. on a regular basis, he did not establish there was a beneficial parent-child relationship sufficient to apply the statutory exception to adoption. The visits that took place after Jorge was released from prison generally were appropriate and pleasant. Jorge would greet L.V. with hugs and kisses, and L.V. usually would reciprocate the affection. Jorge played with L.V. and gave her gifts and food. The record, however, does not show that L.V. had difficulty separating from Jorge or show signs of distress when the visits ended. Social worker Prokesch concluded that L.V. did not view Jorge as a parental figure. The relationship between Jorge and L.V. was more like one shared between a child and an extended family member, rather than that of a father and child. The court was entitled to find the social worker's opinion credible and give greater weight to her assessment than to opinions of other service providers. We cannot reweigh the evidence or substitute our judgment for that of the trial court. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53.)

L.V. shared a bond with her relative caretaker and looked to the caregiver to meet her needs. Jorge had been provided the opportunity to visit L.V. and participate in services over the span of two years. He did not always avail himself of these services and once the court terminated services, Jorge had yet to progress to unsupervised visits or show that he could perform basic parental duties. (See *In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

Jorge relies on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) to support his argument that L.V. will be greatly harmed by the severance of her significant, positive relationship with him. Jorge further claims a parent need not show a "primary

attachment" for the beneficial parent-child relationship exception to apply. He argues the facts of his case are similar to the facts in *S.B.* because, like the father in that case, he regularly visited L.V. and shared affection with her. This court in *S.B.* reversed an order terminating the father's parental rights over his daughter under the parent-child beneficial relationship exception to adoption. The father there complied with every aspect of his case plan, frequently visited the minor and was devoted to her. The minor loved her father and wanted to live with him. (*Id.* at pp. 294-295.) This court concluded the minor would be greatly harmed by the loss of the significant, positive relationship the minor shared with her father. However, while factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the trial court had sufficient evidence to support its findings. Further, *S.B.* "does not . . . stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937, mod. 2009 Cal.App. LEXIS 1291.)

After balancing the strength and quality of the parent-child relationship against the security and sense of belonging that an adoptive placement would give L.V., the court found the preference for adoption had not been overcome. Substantial evidence supports the court's finding the section 366.26, subdivision (c)(1)(B)(i), exception is inapplicable. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 425.)

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.